

getting it purchased

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The quarterly newsletter of the Procurement and Printing Division

Fall 2001

Montana Department of Administration • Website address: www.discoveringmontana.com/doa/ppd

NEWS AND NOTES

Total Contract Value. Several agencies, we've discovered, have a differing view of which solicitation method to use when determining whether a needed supply or service should be considered within the range of a "small purchase," "limited solicitation" or formal solicitation method, and whether a potential contract will exceed the agency's delegation amount. To finally end any confusion on the subject, the concept of "total contract value" is now defined in administrative rule. It is defined as "the initial contract period and any options to renew." For instance, if a janitorial contract is issued for \$5,000 per year for an initial contract period of three years, with options to renew for three more one-year periods, the "total contract value" is \$30,000. In this case, because the "total contract value" exceeds the limits for a small purchase or a limited solicitation, this service must be secured through a formal Invitation for Bid or Request for Proposal. If the agency has Level One Delegation authority (delegation up to \$25,000), the project must be sent to the State Procurement Bureau.

Limited Solicitation Level Raised. Beginning October 1, 2001, the "limited solicitation" method of procurement may be used for the procurement of supplies or services up to \$25,000. This method requires the purchasing agency to obtain three viable quotes and document the solicitation and award process. For complete information on this solicitation method and to locate the forms utilized to document a limited solicitation, go to our website (noted above) and check under "Procurement Questions and Answers" and "Standard Contract Language and Forms." For additional information, please call us at 444-2575.

Resident and Montana-made Preferences Eliminated. Effective October 1, 2001, the law

requiring a 3-8% preference for Montana residents and Montana-made products has been eliminated. This preference, while attractive on the surface to Montana businesses, was actually harming them when they tried to do business with 34 other state governments. In those states, our 3-8% preferences were being held against the Montana company in a bidding situation—often without the business even being aware of it. Montana now joins the ranks of the 34 states that apply a "reciprocal" preference against businesses coming from one of the seven remaining states which still give a residency preference to their own businesses (WY, WV, NM, LA, AK, HA, and SC).

The new "reciprocal" preference will only apply to an Invitation for Bid for supplies and then only in the event that the application of a preference would benefit a Montana resident business and no federal funds are involved. The State Procurement Bureau will still track the residency status of the Montana businesses and will continue to post that information on the PeopleSoft vendors list. (If you need assistance in locating that information on PeopleSoft, please call Bonny Belling at 444-3322.)

The State Procurement Bureau will also post a list of states with residency preferences on our website. For assistance in applying reciprocal preferences, please call Sheryl Olson at the State Procurement Bureau at 444-2575.

Legislative Changes. The Montana Information Technology Act (SB131), effective July 1, 2001, made substantial revisions to the Department of Administration's responsibilities with regard to computing and telecommunications. One key change to statute is an expanded approval requirement for the acquisition of information technology (IT) resources. Information technology is defined as "hardware, software, and associated services and infrastructure used to store or transmit information in

any form, including voice, video, and electronic data." The Department of Administration "shall review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities."

Effective immediately, the review and approval of agency acquisition of IT resources will be required. Please plan accordingly when pursuing your IT procurements. The State Procurement Bureau will not proceed with any purchase requests without the required approvals. The entire list of requirements can be obtained by contacting ITSD's Policy and Planning Services Bureau at 444-5476.

More Purchasing Training Classes. Each fall and spring, the State Procurement Bureau will be offering two classes on purchasing issues through the Professional Development Center (PDC). These courses are ideal for new employees working in the area of procurement in your agency. This fall "Basic Purchasing Methods and Issues" will be taught October 23, 25 and 30. The "Advanced Purchasing Methods and Issues" class will be taught November 8, 13, and 15. These courses will be taught by Penny Moon, Contract Officer for the State Procurement Bureau. To register, contact the PDC at 444-3985. The cost of the day-long courses is \$20.00.

New Procurement Delegation Agreements In Place. Effective October 1, 2001, each agency has a new Procurement Delegation Agreement in effect. These agreements will run until September 30, 2003. If you did not receive a copy of your agency's agreement, please call us at 444-2575.

New Laws and Administrative Rules In Effect. Effective October 1, 2001, all of the changes made by SB 90 passed by the 2001 Legislature are in effect. The highlights of that bill included: elimination of the procurement preferences; expansion of the applicability of the Montana Procurement Act; providing the Department of Administration with the authority to pilot "alternative procurement methods"; and a modification of the definition of sole source. To correspond with the statutory changes, several administrative rules have been adopted or amended. In addition, a definition of "total contract value" has been added.

New "getting it purchased" Manual Complete. The 2001 update to the Montana Operations Manual, Chapter 1-0700, is now complete and has been issued under the title of the "getting it purchased" manual. This manual will be distributed to participants in the "Basic" and "Advanced" purchasing classes offered through the Professional Development Center and is available

electronically on our website. If you would like additional copies of the manual, please call us at 444-2575.

Remember – Energy Star Ratings. The State Procurement Bureau is in the process of adding "Energy Star" specifications to our bids for information technology hardware, office machines and lighting products. If, however, your agency is purchasing individual items such as fax machines, copiers, or appliances, be sure to request products that have an "Energy Star" rating. The "Energy Star" program began in 1992 with federal Environmental Protection Agency as a voluntary labeling program designed to identify and promote energy-efficient products in order to reduce carbon dioxide emissions.

COLOR REPRODUCTION

Print Services has seen a dramatic increase in the desire to use color on program publications. There are many ways to use color—some more expensive than others. There are some "dos and don'ts" to designing with color that will help your budgets. If you are not sure about how your project will be printed, it is important to find this out prior to starting your design layout. This will give you an idea how to design your piece using color effectively and efficiently.

Certain computer programs, such as Word, WordPerfect, Power Point and Harvard Graphics, are not meant to be used for the color printing process. Clip art cannot be color separated. Therefore, a piece designed in Word can only be color copied, which can be very expensive. Simple art that appears to be black and one other color can often be used effectively and save money as opposed to computer clip art done in full color.

If you are using a desktop publishing system for your design work, be sure that your program is compatible with Cyan, Magenta, Yellow, Black (CMYK) for the printing process and not strictly Red, Green, Blue (RGB) for laser output. With the increased use of color laser printers and color copiers, we have a growing interest in printing in full color. However, be aware that the process involved with laser printers is not compatible with the printing process.

Applying Prevailing Wages for Contracts Issued Under the Montana Procurement Act

Prepared by the Department of Labor and Industry and
the Department of Administration
July 2001

1. What is a "contract period or term" for purposes of applying the prevailing wage requirement? Is it only the initial contract term, or does it include the possible options the State has to renew the contract for additional periods?

ANSWER: It is the initial contract term plus any "possible" options the State has to renew the contract for additional periods. By having a contract with renewal options in it, the State is risking application of the prevailing wage requirements if the total of the sums paid under the contract exceeds \$25,000. In addition, Rule 24.16.9009 of the Administrative Rules of Montana (ARM) speaks to the requirement to pay the prevailing rate of wages on contracts or bid specifications for public works in excess of \$25,000.

2. The State of Montana issues bids from which multiple contracts to multiple vendors may, on occasion, be awarded. If the individual contracts issued as a result of a bid do not exceed \$25,000, must the requirement for the payment of prevailing wages be included?

ANSWER: In accordance with section 18-2-401(9)(a), MCA, and ARM 24.16.9009, the requirement to pay the prevailing wage rates on contracts exceeding \$25,000 is determined by the total value of the contract or bid specifications. It is not determined by the value of contracts subsequently issued by the State. Thus, if the State issues a bid with multiple contracts, all contracts are subject to payment of the prevailing wages if the total of the contracts bid exceeds \$25,000. In other words, an invitation for bid is considered one contract regardless whether a single vendor or multiple vendors are awarded the contract.

3. At times, the State will issue bids for the same type of service at varying times of the year. For instance, we might issue a bid for janitorial services for half of the buildings on the capitol complex in January and another bid for the other half of the buildings in June due to varying contract cycles. Neither group would exceed \$25,000 per year. Should we require the payment of prevailing wages?

ANSWER: The determining factors for considering whether or not the requirement for payment of prevailing wages exists is how the invitation for bid was issued (single or multiple contracts), contract period, renewal options (if any), total cost, etc.

4. At times, a state agency may issue a bid for non-construction services for field sites around the state. Taken alone, none of the sites would exceed the \$25,000 per year mark. However, if added together in the bid, the sum of the potential contracts would exceed \$25,000 per year. Should prevailing wages be required?

ANSWER: Again, if the State issues a bid for multiple contracts which total in excess of \$25,000, all contracts are subject to payment of the prevailing wages, as it is considered one contract regardless if the bid is for field sites around the state.

5. A contract is issued for a three-year period. The contractor is required to pay the prevailing wage in effect at the time the contract was signed. But what rate should the contractor pay if after the initial three-year period, the contract is renewed for a new two-year period?

ANSWER: If the initial contract provides for an extension of the contract at the same negotiated compensation rates as originally agreed upon, this constitutes a "renewal" that would utilize the same prevailing wage rates in effect at the time of the initial agreement. Should the contract, however, provide for a modified compensation rate for the vendor during the agreed extension of the contract, this would constitute a "renegotiation" and the prevailing wage rates in effect at the time of such renegotiation would apply.

QUESTION OF THE QUARTER

"How can state agencies ensure success in their IT procurements?"

Success may be hard to define, but at a minimum, success should be measured by how a finished product meets the original requirements and objectives. According to recent reports, almost three-quarters of all software development in the Internet era suffered from one or more of the following: (1) total failure; (2) cost overruns; (3) time overruns; or (4) a rollout with fewer features or functions than promised.

Unfortunately, there is not one single thing that can guarantee success when it comes to IT procurements. However, some steps that may put the odds in your favor are below:

- ✓ ***Every RFP should demand compliance with defined required practices. Specify what and how. Avoid "Best Practices" if not defined or measurable.***
- ✓ ***Agencies must incorporate verification and validation practices into the RFP and contract, then perform audits on projects to ensure compliance.***
- ✓ ***Consider the idea of hiring an independent third party to help write and evaluate the RFP, and assist in monitoring the project.***

Some of these services are available through existing contractors under the MIS Services Term Contract.

Remember that the purchase of ANY IT hardware, software or consulting services must be approved in advance by the Information Technology Services Division of the Department of Administration. Contact Mary Bryson at 444-5476 early in your planning.

PURCHASING USERS GROUP

The next meeting of the Purchasing Users Group will be Thursday, November 1, 2001, from 1 p.m. to 4 p.m. in the Scott Hart Auditorium in Helena.

PEOPLESFT UPDATE

PeopleSoft Vendors List – New "Select" Option.

Thanks to the efforts of the Statewide Accounting, Budgeting, and Human Resource System (SABHRS) staff, a new feature has been added to the panels used to select vendors for solicitation. Vendors can now be "selected" instead of "de-selected" from the list. This will make using the PS vendors list tremendously easier. Thanks SABHRS!

Chartfield Information. Expense accounts (6xxxx) should now be used when inputting requisitions to be processed by the State Procurement Bureau. (Please do not use 1803.) This will allow agencies to use the PeopleSoft PO Voucher payment process when paying for resulting purchase orders without having to "battle" with inserting more chartfield lines and additional data entry. For more information on using expense chartfield information, contact Bonny Belling, State Procurement Bureau, 444-3322. For information on paying for purchase orders using the PO Voucher process, call the Accounts Payable Help Desk at 444-2000 (x3, x3, x1).

ON THE LEGAL FRONT

A contested case hearing testing the State's ability to reject late proposals is set for November 5-7, 2001, in Helena. This case is the result of a protest filed in May 1999 when the State Procurement Bureau rejected a RFP submission on the basis of it being late.

THINK ABOUT IT

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time."

—Abraham Lincoln, 1850

ABOUT THIS NEWSLETTER

"getting it purchased" is published quarterly by the Procurement and Printing Division of the Montana Department of Administration and is designed to fit in the "getting it purchased" desktop manual. For more information, or to get on the mailing list, contact (406) 444-2575. Our address is: P.O. Box 200135, Helena, MT 59620-0135. Fax number: (406) 444-2529. Website address: www.discoveringmontana.com/doa/ppd.

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NEWS AND NOTES

Legislative Review. The most significant changes to state procurement law were made by SB 90 of the recent session and will be effective October 1, 2001. (See the Spring 2001 issue of this newsletter for a complete description of this bill or call 444-3315 for a section-by-section comparison of the old law to the new law.) Over the summer, new rules and policies will be developed to implement these changes to the Montana Procurement Act and preference requirements.

Two other bills will also impact state procurement. HB 239, effective July 1, 2001, ensures access to information technology for individuals who are blind or visually impaired. The bill requires the State to develop a technology access clause that requires compliance with nonvisual access standards developed by the State. The access clause and the nondiscrimination language required in section 49-3-207, MCA, must be inserted in all contracts for the procurement of information technology by, or for the use of, state agencies, purchased in whole or in part with funds provided by the State. Model language and policy requirements are in the process of being developed by the Department of Administration and will be posted on our website at www.state.mt.us/doa/ppd under "Standard Contract Language & Terms" under "Technology Access."

The Legislature also passed HB 500, which will make small changes in the language currently used in procurement documents concerning prevailing wages. The bill is also effective July 1,

2001. A new standard statement on prevailing wages will be posted at our under "Standard Contract Language & Terms" under "Prevailing Wages."

Welcome, Rhonda! The State Procurement Bureau recently welcomed Rhonda Grandy as the new Contracts Assistant for Devin Garrity. Rhonda came to us from a position in the Legislative Printing and Distribution Center.

Beware of "Approved" Vendors. The State Procurement Bureau has recently become aware that state offices may be getting calls from vendors introducing themselves as "approved" vendors for the State of Montana. Be careful when you hear this term. The only "approved" vendors that the State has are those that currently have an individual contract with a state agency, are on one of the Statewide Term Contracts or in some very limited instances, a vendor may have been "pre-qualified" as a requirement for submitting certain bids or proposals. Unfortunately, some vendors may have the mistaken idea that just by sending in a state vendor registration form that this somehow represents an "approval" process on the part of the State. In reality, sending in the form simply tells us what supplies or services they would like to sell to the State and in no way reflects an evaluation or endorsement of the legitimacy of their company or quality of their supply or services. If you have any questions about calls you may be receiving from vendors, please call the State Procurement Bureau at 444-2575.

Need Procurement Training? Agencies are welcome to contact the State Procurement Bureau and request specialized training on

procurement issues. We can tailor a class to fit your particular needs. Contact Sheryl Olson at 444-3315 to set up a date and the course content.

The State Procurement Bureau will also be offering day-long classes this fall on basic and advanced purchasing for state agencies. The classes will be taught by Penny Moon from the State Procurement Bureau. The basic purchasing class will be offered October 23, 2001. The advanced class will be held on November 8, 2001. The courses will be repeated in the spring. To register, contact the Professional Development Center at 444-3985.

Word of Caution on Irrevocable Letters of Credit. On occasion, agencies may be in the position of accepting letters of credit as performance security. One note of caution: be sure the effective dates of the letters of credit match the contract period and *not the date on which it was issued to the contractor*. Also, be sure that an automatic extension clause is included in the letter of credit if the contract period will extend beyond the expiration date of the letter of credit.

Electronic Requisitions Required. Agencies need to remember that the State Procurement Bureau must have an electronic PeopleSoft requisition before we can begin work on your projects. *And please*, provide us with as much information as possible in the Comments field of the requisition. At a minimum, please provide us with: (1) a brief description of the project if the Item ID is not explicit enough; (2) the contact person and a phone number; (3) where the Contracts Officer can find the specifications (e-mail, deadhead, etc); (4) tell us if federal funds are involved; (5) list any special instructions such as special ship-to's, etc.; and (6) tell us if the agency will be sending a list of suggested vendors. Providing this information on the requisition will save us trying to track it down before we can start on the project.

Federally Debarred Contractors. Agencies using federal funds to purchase supplies or services need to be aware that contracts cannot be issued to companies that have been barred from doing business with the federal government for fraud or other violations. Check the federal government's list of debarred companies at the following website: <http://epls.arnet.gov> or on the Procurement and Printing Division's website.

Agencies *must* check this list before issuing a contract involving federal funds or ask the State Procurement Bureau for assistance at 444-2575.

ON THE LEGAL FRONT

Just as this issue of the newsletter was going to print, a decision was issued in favor of the State in a contested case hearing concerning the award of a contract for front-end loaders. The major issue in the case involved whether or not the State properly awarded a contract by relying on manufacturer's literature to determine compliance with the bid specifications. The protestor now has 30 days in which to appeal for judicial review.

CENTRAL STORES UPDATE

Since the Beginning of Time. Since the beginning of time the Central Stores Program has furnished a pre-requisition to all its customers for the purchase of calendars and planners for the next year. The pre-requisition was normally sent out in April and the calendars were delivered in the fall.

This year there is a change! You may have noticed, or maybe not, that you did not receive a pre-requisition this year. We are encouraging all our customers to order calendars and planners using your everyday ordering methods. Calendar year 2002 calendars can be ordered starting September 1, 2001. Academic calendars can be ordered immediately. We will deliver the calendars as we receive them from our distributor. Please use the stock numbers from the Central Stores in-stock and color catalogs; any other catalog; order numbers you have used in the past or the re-order numbers printed in the calendars you are now using.

THINK ABOUT IT

"Obstacles are those frightful things you see when you take your eyes off the goal."

--Henry Ford

"ENVIRONMENTALLY PREFERABLE PROCUREMENT" AND THE "ENERGY STAR" PROGRAM

In light of Governor Martz's issuance of Executive Order 01-03 directing that energy conservation measures be taken in state buildings, the State Procurement Bureau will now be including an energy conservation specification in many of the State's bids and proposals. Specifically, we will now be incorporating the U.S. Environmental Protection Agency's (EPA) "Energy Star" program into the State's procurement process.

The "Energy Star" program began in 1992 as a voluntary labeling program designed to identify and promote energy-efficient products in order to reduce carbon dioxide emissions. Since then, the EPA has partnered with the U.S. Department of Energy with each agency taking responsibility for particular product categories. The "Energy Star" program has expanded to cover many areas, including office equipment, lighting, and consumer electronics.

According to information provided by the EPA:

- *Energy-efficient products available on the market can reduce energy costs by 25 percent to 50 percent, or more, without compromising quality or performance.*
- *Energy-efficient products improve air quality because fewer fossil fuels are burned. In addition to lowering air pollution, reduced energy waste helps utilities offset their peak loads and avoid the need to construct new power plants.*
- *Investments in energy-efficient products can quickly pay for themselves and provide a significant return on investment.*
- *Energy-efficient products have an extended life and offer decreased maintenance.*

Over the last year, the SPB has worked closely with the Pollution Prevention Bureau of the Department of Environmental Quality (DEQ), to explore the possibility of incorporating "environmentally preferable procurement" policies into the procurement of state supplies. The initial push was to meet the requirements of the State's "3R's (Reduce, Reuse, and Recycle) in State Government" program, which DEQ spearheads. In the process of exploring ways to comply with the 3R's program, we discovered the "Energy Star" program. As a result, whenever possible, we will now be including this energy rating specification in our solicitations for the purchase of information technology hardware, office machines, and lighting products. In fact, many of these product lines already carry the "Energy Star" rating.

The SPB can help state agencies comply with the Governor's Executive Order and save money by adopting strategies for the purchase of energy-efficient products. The SPB will work with agencies when the "Energy Star" specification could be added to their solicitations. The cost savings over time can be calculated and documented using a method and data available from the EPA. If you'd like more information, contact the SPB at 444-2575.

QUESTION OF THE QUARTER

"I've heard that that the preferences for Montana residents and Montana goods were repealed by the recent Legislature, and that a different kind of preference was put in their place. Please explain!"

Yes, the 3% Montana resident preference, the 3-5% Montana-made preference and the 3-8% preference for printing was eliminated by the Legislature effective October 1, 2001. In their place, Montana will now have what is called a "reciprocal" preference. A reciprocal preference is, in reality, a "retaliatory" or "reverse" preference. What that means is that whatever amount of preference an out-of-state vendor may enjoy in their home state, will now be held against them when they submit bids for supplies in Montana. Currently there are only seven states remaining which have preferences that will be subject to the reciprocal preference. Those states are Alaska, Hawaii, Louisiana, New Mexico, South Carolina, West Virginia and Wyoming. As a result of the legislation, Montana will now join 33 other states that apply "reciprocal" preferences against these states.

In order for the reciprocal preference to come into play, a vendor from one of those states would have to be the low bid, followed by a Montana resident bidder. If your agency faces that situation, the first step is to call the State Procurement Bureau at 444-3315. We will work with your office to: (1) verify the amount of applicable preference to be held against the out-of-state low bidder; and (2) verify the resident status of the Montana vendor. We expect that reciprocal preferences will *very rarely* come into play due to the small number of states remaining that have resident preferences.

RTS/TERM CONTRACT UPDATE

New Cellular Rate Plans and Billing Change. Verizon Wireless, the State's current cellular provider, eliminated its current billing system effective June 2, 2001. The old billing system allowed the State to pool minutes from phones located throughout the state (cross-market

billing). In addition to losing cross-market billing, the State will no longer have the first incoming minute free, and pooled minutes will be on a first-come-first-served basis. In an attempt to mitigate the effect of these changes, the State has negotiated several revisions in the usage plans. Currently, the low usage plan costs \$10.99 per month and includes 60 minutes of usage. The revised low usage plan will cost the same, but will include 105 minutes of usage. The present cost of the high usage plan is \$19.99 per month and includes 200 minutes of usage. The revised high usage plan will cost the same, but will include 330 minutes of usage.

The State and Verizon estimate that if agencies are placed on the appropriate plan based on their usage, the State could save approximately \$166,000 in the next year. The amount of savings per agency will vary depending on a number of factors.

Verizon will provide additional information to agency accounting personnel to assist them in working through the billing issues. Hopefully, the anticipated savings will offset the frustration of dealing with the accounting issues. Agencies are encouraged to contact Verizon for assistance during the transition process.

PURCHASING USERS GROUP

The next meeting of the Purchasing Users Group will be Thursday, July 19, 2001, from 1 p.m. to 4 p.m. in the Scott Hart Auditorium in Helena. The major discussion topic will be the application of prevailing wages to state contracts.

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Spring 2001

NEWS AND NOTES

Major Legislative Changes. The 2001 Legislature has passed SB 90 which will make substantive changes to state purchasing laws and processes. This bill, introduced at the request of the 1999-2000 State Administration Interim Committee, was the result of a two-year study of state contracting.

The bill affects five major areas of state procurement. First, the traditional Montana resident, Montana-made and printing preferences have been eliminated and replaced with a reciprocal preference. A reciprocal preference is, in effect, a "retaliatory" preference that penalizes companies bidding on Montana supplies by the same amount of preference they would enjoy in their home state over Montana businesses. The summer issue of "getting it purchased" will contain complete instructions on how to apply reciprocal preference to a bid.

The second change clarifies the applicability of several sections of the Montana Procurement Act. One amendment makes it clear that the Act will apply to the purchase of all state supplies and services unless they are specifically exempted by statute. In addition, the bill clarifies that the Act applies even if the awarding of a contract will not "cost" the State anything.

A third change provides direction on what to do if a valid solicitation does not result in a contract. The Department of Administration must write rules setting out the conditions whereby a procurement officer may negotiate directly with a vendor if a subsequent solicitation would also be unsuccessful.

The fourth major change permits the Department of Administration to authorize pilot alternative procurement methods other than those currently allowed by the Montana Procurement Act. The

Department is required to write rules delineating the circumstances and processes by which an alternative procurement process may be used. The ability to experiment with new procurement methods will end in 2005.

The final major change in procurement law is the modification of the definition of a sole source purchase to include "when there is only one acceptable or suitable source for a supply or service." Again, the Department of Administration will be writing rules to address this issue.

Senate Bill 90 also made numerous smaller changes to the Montana Procurement Act. For a section-by-section comparison of the old law to the new law, contact Sheryl Olson at the State Procurement Bureau at 444-3315. This bill becomes effective October 1, 2001.

Legislative Changes That Did Not Happen. HB 48 was the second part of the recommendations issued by the 1999-2000 State Administration Interim Committee. It was an appropriation bill that would have added resources to the State Procurement Bureau to establish an extensive vendor outreach and agency procurement training program and to begin a major effort to monitor the performance of major state contracts. Due to financial limitations, HB 48 did not pass.

Other Legislative Bills Affecting Purchasing. Several other bills will affect state procurement if they are passed. Agencies should track the status of the following bills: HB 239 concerning access to information technology for the visually impaired; HB 500 revising provisions of the Davis-Bacon act; SB 131 revising information technology laws; and SB 320 concerning state purchase of renewable fuel vehicles. The final status of these bills will be covered at the July 19, 2001, Purchasing Users Group meeting and will be addressed in the summer issue of this newsletter.

Year-end Cut-off. It's again time to remind everyone that all FY 2001 requisitions need to be submitted to the State Procurement Bureau by May 1, 2001, so that all contracts and purchase orders can be completed no later than June 30, 2001. If you need to encumber funds as a FY 2001 purchase, the entire purchasing process must be completed by this date. *In addition, due to the complexities of the RFP process, all RFPs need to be started well before the May 1 cut-off.*

At Long Last—A New Model RFP. After months in the making, the State Procurement Bureau is happy to announce the issuance of a new model Request for Proposal (RFP). New sections have been added and many have been standardized. In addition, new options have been developed that will allow the agency to adapt the RFP document to fit the type of service that the agency is seeking.

The new model RFP is available at the Procurement and Printing Division's website at www.state.mt.us/doa/ppd under "Resources." Contact the State Procurement Bureau staff at 444-2575 for advice on how to get started in developing a RFP.

Updated Standard Statements and Forms. Over the past few months, several standard statements and forms have been revised and/or developed and posted on the Procurement and Printing Division website. Among those documents are the following: Cooperative Purchasing statement; Boilerplate for Bids, Proposals, Purchase Orders and Contracts; Confidentiality Statement; Non-Conflict of Interest Statement; Trade Secret Confidentiality Affidavit; RFP Evaluation Process – Instructions; RFP Sample Scoring Guide; "Sole Source" Procurement Justification; and "Sole Brand" Procurement Justification. Most revised documents can be found under the website's "Resources" heading. Under the State/Local Information heading, we have added our Quote Group Assignment document, which lists the various quote groups and the Contracts Officer assigned to each.

ON THE LEGAL FRONT

Three procurement-related cases are currently in various stages of the protest or litigation process. First, we are anticipating a court date for the *Spiker* case sometime in late summer or early fall of 2001. This case, which began in 1995, is now challenging the constitutionality of a 1997 law amending the exclusive remedies in section 18-4-242, MCA. The case originally began as an allegation that the State unlawfully revealed the contents of Spiker's RFP proposal to other proposers.

The second case is a request for a contested case hearing due to the State's rejection of a late proposal in May of 1999. A date has not yet been set for the hearing.

The third case is a protest contesting the State's award for front end loaders in the summer of 2000. A contested case hearing was held in December and the parties are now waiting for the recommendation of the hearings officer.

GETTING IT MAILED

Afternoon Mail Pick-up Schedule Changes. Effective March 19, 2001, Mail Services was required to change its afternoon mail pick-up schedule. The afternoon mail run was typically done between 2:30 p.m. and 3:30 p.m. The revised schedule moved the time ahead one hour, to between 1:30 p.m. and 2:30 p.m. This change was necessary to accommodate schedule changes at the Helena Post Office. We apologize for the short notice we were able to provide to you, and we certainly appreciate your cooperation in helping us meet your needs and those of the U.S. Postal Service.

Capitol Post Office. During the Legislative Session, Mail Services has expanded hours of operation at the Capitol Post Office. To meet the needs of the public and the Legislators, the Post Office is open 8 hours a day. When the Legislature is not in session, the hours of operation are reduced. After the Legislature adjourns, Mail Services will resume morning hours only for the Capitol Post Office.

GETTING IT PRINTED

The Legislative Session is in full swing and the Capitol Quick Copy has been busy printing the daily proceedings of the Legislature. The staff has been working two shifts a day, six days a week to meet the Legislature's needs. As of the mid-session transmittal break, the Capitol Quick Copy had produced nearly 4.5 million impressions.

The Legislature is scheduled to adjourn on April 24, 2001. For the two weeks immediately following adjournment, the staff will concentrate on finishing the printing requests from the final days of the session. The Capitol Quick Copy should be able to resume normal operation for state agencies on May 7, 2001.

Print Services would like to thank all the agencies for their cooperation during the session.

FOR YOUR INFORMATION

Temporary Services Term Contract versus Modified FTE

In November of 2000, the State Procurement Bureau (SPB), entered into a new Temporary Services term contract so that the various state agencies could utilize the services of private companies to provide temporary workers as needed. These individuals can provide a variety of clerical, data entry, and word processing services on a temporary basis. Since the award of the term contract, several questions have been posed to SPB concerning its proper use.

Under the term contract, temporary workers can be provided to the requesting agency/department for a **maximum of three months or 480 hours**. This time limit distinction, plus other factors, places the services of the temporary worker under the definition for "temporary service contractor" as defined by section 39-71-115(33), MCA. This means "[a] person, firm, association, partnership, limited liability company, or corporation conducting business that **hires its own employees and assigns them to clients to fill a work assignment with a finite ending date** to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects." A person hired by this process is not an "employee" of the State, but an employee of the contractor providing the service to the State.

A strict adherence to the time limit factor must be applied. An individual working in this contractual basis cannot be kept on by an agency beyond the maximum 480 hours **unless they clearly change work units and functions**. The issue here is to avoid a claim from a temporary service worker that he/she is really an employee of the State and, therefore, entitled to benefits and wages. Agencies need to be extremely mindful to avoid potential liability under these circumstances.

State agencies should utilize the modified FTE process from the Office of Budget and Program Planning for temporary employment requiring longer terms. This situation would fall under the definition of "temporary worker" in section 39-71-116(35), MCA, where someone is hired on a "part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects." This ensures that the position is tracked under the budget area for personal services and the

documentation can be used by the agency to support a request for an additional FTE during the budget process.

Another question that has arisen is whether a worker hired under this term contract can drive a vehicle or operate motorized equipment as part of the duties under the contract. The answer is yes, but because this work is different than that defined and negotiated under the term contract, an agency must tell the contractor that the job will require driving and/or operation of motorized equipment when requesting the worker. The additional duties may increase the cost of hiring the temporary worker and require a different workers' compensation classification.

SABHRS UPDATE – Purchasing Module

REVISION: **PURCHASE ORDER CANCELLATION**

The following steps will take you through the revised cancellation process for a purchase order:

1. Open the purchase order by going through Manage Purchase Orders/Purchase Order or PO Workbench.
2. Enter any appropriate comments into the Comments section. (Comments should always be added first before canceling, as you will not be able to enter them after the purchase order has been canceled). Save the purchase order. Red "X" out of the purchase order.
3. Go to PO Workbench. Select the purchase order to be canceled.
4. Click on the Cancel button at the bottom of the panel.
5. ***Save the panel. The status of the purchase order will then change to "Canceled."***

REMINDER: ENTERING REQUISITIONS -- **"STATE" OR "P & G" BUSINESS UNIT**

Entering requisitions into PeopleSoft for processing by the State Procurement Bureau or Print Services Bureau requires a special login ID. This login ID consists of your operator ID followed by the letter "A." *Requisitions entered without using this operator ID cannot be seen or picked up by either Bureau.*

If you were previously able to enter requisitions into PeopleSoft for processing by the State Procurement Bureau or Print Services Bureau, but now cannot, your password may have been deleted due to a password clean-up effort by SABHRS.

Please direct any security questions to Barb Thomas, SABHRS, 444-2503.

QUESTION OF THE QUARTER

"We are about to start an RFP process for a three-year contract, with options to renew for a two-year period. We assume that the offerors will not be willing to commit to firm pricing beyond the first contract period. What options do we have to permit the adjustment of prices at the time of renewal?"

RFP drafters need to be aware that section 18-4-313 (1), MCA, requires that the terms of the renewal, if any, must be included in the original solicitation. That means that the RFP you are working on now needs to state how those price adjustments will be made at the time of renewal.

Several options are available to responsibly adjust prices after the first contract period. First, a common approach to adjusting prices is one that ties the adjustments to national indices such as the Consumer Price Index, the Production Price Index, Medical Care Services Index, or a manufacturer's price index. For instance, a service contract may permit price increases at the time of renewal commensurate with the Consumer Price Index. Price increases for items that are handled through a distributor such as photocopiers and fax machines can be tied to the manufacturer's price index.

An additional method to permit price adjustments is to arrive at a percentage increase that the price may not exceed. Special formulas can also be developed based on measurable factors such as the number of clients, hours of service, prevailing or minimum wage rates, etc.

Agencies should keep in mind that they are not obligated to renew a contract and need to look critically at the market before the initial contract period expires in order to determine if better pricing, products or services could be obtained by issuing a new solicitation.

THINK ABOUT IT

"Enjoying success requires the ability to adapt. Only by being open to change will you have a true opportunity to get the most from your talent."

- Nolan Ryan

PURCHASING USERS GROUP

The next meeting of the Purchasing Users Group will be Thursday, July 19, 2001, from 1-4 in the Scott Hart Auditorium in Helena. An agenda will be sent to state agencies in June.

RTS/TERM CONTRACT UPDATE

Paging Services from Verizon Wireless. During the week of February 26, 2001, without notice, Verizon Wireless discontinued paging services offered to the State of Montana under Term Contract 453-M. At this time, some pager numbers have been changed. Verizon Wireless will reimburse the State for any additional charges incurred by agencies as a result of this action. These charges may include reprinting of business cards with new numbers, additional monthly service fees, or other related charges. If you feel your agency has increased costs due to this action, please e-mail Brad Sanders at bsanders@state.mt.us with the details. Supporting documentation will need to be provided, so be sure to keep your receipts. The State Procurement Bureau will continue to work with all affected agencies to provide acceptable solutions to this problem. If you have any questions, please contact Brad at 444-1459.

ABOUT THIS NEWSLETTER

"getting it purchased" is published quarterly by the Procurement and Printing Division of the Montana Department of Administration and is designed to fit in the "getting it purchased" desktop manual. For more information, or to get on the mailing list, contact (406) 444-2575. Our address is PO Box 200135, Helena, MT 59620-0135. Fax number: (406) 444-2529. Internet address: www.state.mt.us/doa/ppd.